

(3) The use of alien crewmembers for such activity is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska; and

(4) Notice of the attestation has been provided to:

(i) Labor organizations which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which make available or intend to make available workers to the particular location where the longshore work is to be performed;

(ii) Contract stevedoring companies which employ or intend to employ United States longshore workers at that location; and

(iii) Operators of private docks at which the employer will use longshore workers.

§ 655.534 The first attestation element for locations in Alaska: Bona fide request for dispatch of United States longshore workers.

(a) The first attestation element shall be satisfied when the employer signs Form ETA 9033-A, attesting that, before using alien crewmembers to perform longshore work during the validity period of the attestation, the employer will make a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the specified longshore activity from the parties to whom notice is provided under § 655.537(a)(1) (ii) and (iii). Although an employer is required to provide notification of filing to labor organizations recognized as exclusive bargaining representatives of United States longshore workers pursuant to § 655.537(a)(1)(i) of this part, an employer need not request dispatch of United States longshore workers directly from such parties. The requests for dispatch of United States longshore workers pursuant to this section shall be directed to contract stevedoring companies which employ or intend to employ United States longshore workers at that location, and to operators of private docks at which the employer will use longshore workers. An employer is not required

to request dispatch of United States longshore workers from private dock operators or contract stevedoring companies which do not meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) or, in the case of contract stevedoring companies, which are not licensed to do business in the State of Alaska.

(1) Wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single qualified labor organization, the employer may request longshore workers from only one of such contract stevedoring companies. A qualified labor organization is one which has been recognized as an exclusive bargaining representative of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which makes available or intends to make available workers to the particular location where the longshore work is to be performed.

(2) A request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock.

(3) An employer shall not be required to request longshore workers from a party if that party has notified the employer in writing that it does not intend to make available United States longshore workers who are qualified and available in sufficient numbers to the time and location at which the longshore work is to be performed.

(4) A party that has provided such written notice to the employer under paragraph (a)(3) of this section may subsequently notify the employer in writing that it is prepared to make available United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity at the time and location where the longshore work is to be performed. In that event, the employer's obligations to that party under §§ 655.534 and 655.535 of this part shall recommence 60 days after its receipt of such notice.

(5) When a party has provided written notice to the employer under paragraph (a)(3) of this section that it does not intend to dispatch United States

longshore workers to perform the longshore work attested to by the employer, such notice shall expire upon the earliest of the following events:

(i) When the terms of such notice specify an expiration date at which time the employer's obligation to that party under §§ 655.534 and 655.535 of this part shall recommence;

(ii) When retracted pursuant to paragraph (a)(4) of this section; or

(iii) Upon the expiration of the validity of the attestation.

(b) *Documentation.* To substantiate the requirement in paragraph (a) of this section, an employer shall develop and maintain documentation to meet the employer's burden of proof under the first attestation element. The employer shall retain records of all requests for dispatch of United States longshore workers to perform the longshore work attested to. Such documentation shall consist of letters, telephone logs, facsimiles or other memoranda to show that, before using alien crewmembers to perform longshore work, the employer made a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity. At a minimum, such documentation shall include the date the request was made, the name and telephone number of the particular individual(s) to whom the request for dispatch was directed, and the number and composition of full work units requested. Further, whenever any party has provided written notice to the employer under paragraph (a)(3) of this section, the employer shall retain the notice for the period of time specified in § 655.533 of this part, and, if appropriate, any subsequent notice by that party that it is prepared to make available United States longshore workers at the times and locations attested to.

§ 655.535 The second attestation element for locations in Alaska: Employment of United States longshore workers.

(a) The second attestation element shall be satisfied when the employer signs Form ETA 9033-A, attesting that during the validity period of the attestation, the employer will employ all United States longshore workers made

available in response to the request for dispatch who, in compliance with applicable industry standards in the State of Alaska, including safety considerations, are qualified and available in sufficient numbers and are needed to perform the longshore activity at the particular time and location attested to.

(1) In no case shall an employer filing an attestation be required to hire less than a full work unit of United States longshore workers needed to perform the longshore activity nor be required to provide overnight accommodations for the longshore workers while employed. For purposes of this section, "full work unit" means the full complement of longshore workers needed to perform the longshore activity, as determined by industry standards in the State of Alaska, including safety considerations. Where the makeup of a full work unit is covered by one or more collective bargaining agreements in effect at the time and location where longshore work is to be performed, the provisions of such agreement(s) shall be deemed to be in conformance with industry standards in the State of Alaska.

(2) In no case shall an employer be required to provide transportation to the vessel where the longshore work is to be performed, except where:

(i) Surface transportation is available; for purposes of this section, "surface transportation" means a tugboat or other vessel which is appropriately insured, operated by licensed personnel, and capable of safely transporting U.S. longshore workers from shore to a vessel on which longshore work is to be performed;

(ii) Such transportation may be safely accomplished; and

(iii)(A) Travel time to the vessel does not exceed one-half hour each way; and

(B) Travel distance to the vessel from the point of embarkation does not exceed 5 miles; for purposes of this section, "point of embarkation" means a dock or landing at which U.S. longshore workers may be safely boarded for transport from shore to a vessel on which longshore work is to be performed; or

(C) In the cases of Wide Bay, Alaska, and Klawock/Craig, Alaska, travel time